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CITATIONS

Cases:

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 526

THE SIOUX TRIBE OF INDIANS, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Claims (R. 330-338) is reported at 78 F. Supp. 787. Prior opinions (R. 22-32 and R. 87-102) are reported at 97 C. Cls. 391 and 105 C. Cls. 658, respectively.

JURISDICTION

The judgment of the Court of Claims was entered on June 28, 1948 (R. 339). A motion for new

trial was denied on November 1, 1948 (R. 339). The petition for writ of certiorari was filed on January 28, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. sec. 1255(1).

QUESTION PRESENTED

Whether the requirement of the Act of March 2, 1889, 25 Stat. 888, that petitioner bear the cost of supplying allottees with the benefits provided in section 17 thereof was altered by the Act of August 13, 1946, 60 Stat. 1049.

STATUTES INVOLVED

The pertinent provisions of the Act of March 2, 1889, 25 Stat. 888, are set forth in the Statement.

Sections 2 and 11 of the Act of August 13, 1946, 60 Stat. 1049, 1050, 1052, provide:

> Sec. 2. * * * In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part

of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

Sec. 11. Any suit pending in the Court of Claims or the Supreme Court of the United States or which shall be filed in the Court of Claims under existing legislation, shall not be transferred to the Commission: *Provided,* That the provisions of section 2 of this Act, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending

or authorized suit in the Court of Claims has been or will be authorized: *Provided further,* That the Court of Claims in any suit pending before it at the time of the approval of this Act shall have exclusive jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of any such suit.

STATEMENT

The Great Sioux Reservation was created by Article II of the Treaty of 1868, 15 Stat. 635. It was reduced in size by Article I of the Agreement of 1876, which was ratified by the Act of February 28, 1877, 19 Stat. 254 (R. 75). It was further diminished by the Act of March 2, 1889, 25 Stat. 888, the statute directly involved here. Having been accepted by the Indians, that Act was made effective on February 10, 1890, by proclamation of the President, 26 Stat. 1554 (R. 74). Its pertinent provisions may be summarized as follows:

Sections 1-6 divided petitioner's remaining lands into six reservations. Section 8 empowered the President to cause the new reservations to be allotted in severalty to the Indians resident thereon. It provided that, if sufficient lands were available, each head of a family should be allotted 320 acres; each single person over 18 and each orphan under 18, 160 acres; and each other person under 18 then living or who might be born prior to the date of the order directing an allotment, 80 acres.

Section 17 directed that each head of family or single person over 18 who should take an allotment under section 8 should be supplied with certain livestock, tools, seeds and cash. It provided:

> so much money as shall be necessary for this purpose is hereby appropriated out of any money in the Treasury not otherwise appropriated; and in addition thereto there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund * * *.

Provision was made for crediting the "permanent fund" with interest at the rate of five per cent per annum and for the use of the interest by the Secretary of the Interior for the benefit of the Indians receiving rations and annuities upon the new reservations. Finally, section 17 provided:

> * * * That after the Government has been reimbursed for the money expended for said Indians under the provisions of this act, the Secretary of the Interior may, in his discretion, expend, in addition to the interest of the permanent fund, not to exceed ten per centum per annum of the principal of said fund in the employment of farmers and in the purchase of agricultural implements, teams, seeds, including reasonable cash payments per capita, and other articles necessary to assist them in agricultural pursuits * * *.

Section 21 provided that the lands ceded by petitioner and restored to the public domain should be disposed of to settlers under the homestead laws. It specified the prices to be paid by settlers and declared:

> Provided: That all lands herein opened to settlement under this act remaining undisposed of at the end of ten years from the taking effect of this act [February 10, 1890] shall be taken and accepted by the United States and paid for by said United States at fifty cents per acre, which amount shall be added to and credited to said Indians as part of their permanent fund * * *.

Section 22 provided:

> That all money accruing from the disposal of lands in conformity with this act shall be paid into the Treasury of the United States and be applied solely as follows: First, to the reimbursement of the United States for all necessary actual expenditures contemplated and provided for under the provisions of this act, and the creation of the permanent fund hereinbefore provided; and after such reimbursement to the increase of said permanent fund for the purposes hereinbefore provided.

Petitioner brought this suit to recover the amount due for the lands ceded to the United States (R. 1-15). The Court of Claims found that the United States had received 9,261,592.62 acres under the cession, that the land had been opened to settle-

ment, and that at the end of ten years, a large part remained undisposed of, and was accepted by the United States at fifty cents an acre (R. 21). It concluded that petitioner was entitled to a credit of $5,307,655.87 (R. 21). It added (R. 23):

> But that fact, in itself, does not create even a *prima facie* liability on the part of the defendant in this suit. The defendant could perform its duty under the agreement as well by expending the money for plaintiff as by holding it for plaintiff.

Accordingly, it directed further proceedings. The United States submitted a report prepared by the General Accounting Office. The report embraced all transactions between the United States and the petitioner down to June 30, 1925. Upon the basis of this report, the court made the following findings of fact:

Sections 21 and 22 of the 1889 Act contemplated that at the end of the ten years mentioned in section 21, i. e., as of February 10, 1900, there would be a settlement between the United States and the petitioner. But the United States never set up this account (R. 38-39). The Act also contemplated that during the ten-year period expenditures for allottees pursuant to section 17 would be made out of Treasury appropriations, but that, at the end of such period, appropriations for this purpose would cease (R. 45, 61). And at that time the sums which had been appropriated were to be paid back from

the proceeds of the disposed lands (R. 45, 61). However, thereafter Congress continued to make appropriations for payments to allottees. As of June 30, 1925 (the end of the period covered by the Comptroller General's report), these appropriations amounted to $8,427,329.54 (R. 65-66). The court held that the petitioner was chargeable with these expenditures (R. 96-99).

Petitioner applied for a writ of certiorari, No. 368, October Term 1946. On October 21, 1946, the petition was denied. 329 U. S. 758. Thereafter, petitioner filed a motion for rehearing and for an order remanding the cause to the Court of Claims. On December 9, 1946, this Court entered its order vacating the lower court's judgment and remanding the cause "in order to enable that court to determine whether the Act of August 13, 1946, 60 Stat. 1049, gives rise to any claims which petitioners may assert to affect the judgment heretofore entered in this cause, as to which this Court means to intimate no opinion." 329 U. S. 684.

On August 26, 1947, petitioner filed in the Court of Claims a supplemental petition asking that court to reconsider the case in the light of this Court's mandate (R. 319-327). The United States moved to dismiss on the ground that all the questions raised by the supplemental petition had been fully considered by the court before it entered the judgment vacated by this Court and that the Act of August 13, 1946, contains nothing to change the

result then reached (R. 328). On June 28, 1948, the court below entered judgment dismissing the supplemental complaint and restoring the vacated judgment (R. 339). In its opinion (R. 330-338), it held (R. 337):

> We think Congress was dealing fairly and honorably with the plaintiff tribe when it imposed the requirement that the expenditures in question be reimbursed to it out of the funds derived by the tribe from the sale of the surplus lands. The expenditures were strictly advancements by the Government from public funds, without obligation, as was the advancement of the $3,000,000, and, in fairness, the plaintiff tribe should be required to repay the same.

ARGUMENT

Section 17 of the Act of March 2, 1889, made two appropriations: The first was for the purpose of supplying allottees with specified equipment. The second was to set up the "permanent fund" of $3,000,000. As section 22 (p. 6, *supra*) makes plain, the United States intended to be reimbursed for these appropriations from the money received from the sale of the ceded lands. Any excess was to be added to the permanent fund. It was intended that a balance should be struck as of February 10, 1900.

As it turned out, a large part of the ceded lands were not sold and had to be taken over by the United States. The balance was not struck: The Government did not credit petitioner with the

amount due on the lands. On the other hand, Congress continued to appropriate money for allottees and as of 1925 had expended $8,427,329.54 for this purpose. In holding that these expenditures discharged the Government's liability for the ceded lands, the Court of Claims was clearly right.

Since the Act of March 2, 1889 is clear, there is no warrant for resorting to extrinsic sources in order to determine its meaning. *United States* v. *Mo. Pac. R. Co.*, 278 U. S. 269, 278; *United States* v. *American Trucking Associations*, 310 U. S. 534, 543. However, nothing brought forward by petitioner casts doubt on the result reached below. The fact that after the ten-year period Congress continued to make appropriations for the purpose of supplying allottees (see Pet. 4, 7, 17-20) is perfectly consistent with an intent that ultimately the United States would be reimbursed. The circumstance that Congress rightly recognized that these appropriations were not chargeable against the "permanent fund", which was to be used for other purposes (see p. 5, *supra*), is equally insignificant on the question of whether the expenditures were to be repaid.[1]

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[1] Petitioner quotes (p. 19) section 15 of the Act of June 18, 1934, 48 Stat. 984, providing that expenditures from appropriations authorized by that Act should not be considered as offsets. That provision is inapplicable to this case. As has been shown (pp. 7-8, *supra*), none of the expenditures here taken into account were made after 1925.

There is no basis in the record for petitioner's contention (Pet. 3, 4, 7, 9-17) that the Indians were led to believe that these payments under section 17 were to be gratuitous. So far as the records of the negotiations show, the matter came up for discussion twice and on each occasion, the Indians were told that the payments would have to be reimbursed. Thus, as petitioner concedes (Pet. 14), the Indians of the Santee Agency were told that the benefits to be paid would "come out of the proceeds of the sale of the lands" (R. 213). On the other occasion, 12 chiefs and about 500 Indians of the Cheyenne River Agency were present (R. 243). They were told (R. 246):

> * * * Now, as I told you the other day, we do not know how good these lands are or how much money they will bring, but we guess that it will bring about $8,000,000. Now, as soon as you accept this act the Government places to your credit $3,000,000 at 5 per cent. interest. * * * Now, the schools that are provided for in section 17 are to be paid for by the Government, and not out of your money.
>
> The rations and annuities provided for in the treaty of 1876 are paid for by the Government and not out of your money. Now, when the Government gets the $8,000,000—if it gets it, it will take out of that $8,000,000 the $3,000,000 that it first puts to your credit. *It takes out also what it pays for cows and mares and agricultural implements, and what is left*

is added to the $3,000,000 that was first set apart for the Indians. * * * [Italics added.]

Clearly, therefore, the court below was amply supported by the record in finding that the Indians understood and agreed when they signed the agreement that the articles and payments to be furnished and made under sec. 17 would be paid for out of the proceeds from the ceded land (R. 99, 334-336; and see R. 61, 97).[2]

Petitioner's contention (Pet. 6, 20-21) that on the basis of "fair and honorable dealing" the United States should bear the burden of these expenditures (sec. 11, Act of August 13, 1946, pp. 3-4, *supra*), depends wholly upon its assertions that Congress and the Indians so interpreted the 1889 Act. Since these assertions are unfounded, the contention must fail. In any event, the conclusion of the Court of Claims that "fair and honorable dealings" required the petitioner to repay the advancements made by the Government, is clearly correct. Consequently, the Act of August 13, 1946, does not give rise to any claim which affects the judgment previously entered by the Court of Claims, which has now been reinstated by that court.

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[2] General Warner's statement at Standing Rock cited by petitioner (p. 15) that the money would not come from the "permanent fund" was of course correct. It has no tendency to show that the Indians were led to believe that the money would not have to be repaid.

CONCLUSION

The decision below is correct and the case does not warrant review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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